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MICHAEL RODAK, JR., CLERK

No. 78-1496

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IN THE  
**Supreme Court of the United States**  
 October Term, 1978

LOCAL 13000, UNITED STEELWORKERS OF AMERICA,  
 AFL-CIO-CLC,  
*Petitioner,*

v.

HARRIS A. PARSON, KAISER ALUMINUM  
 & CHEMICAL CORPORATION,  
*Respondents.*

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**REPLY BRIEF FOR PETITIONER**

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Respondent Parson does not dispute that the issue presented in this case is important, nor that there is a conflict among the circuits as to its proper resolution. He argues, however, that the Court should deny certiorari in this case, and await another in which to decide the issue. We believe, to the contrary, that it is extremely important that the Court resolve the conflict quickly. As noted in our petition (pp. 16-17), there are innumerable cases now pending in the lower courts whose outcome turns upon the correct resolution of this issue, and, perhaps more important, the ability of employers and unions in numerous industries to fashion their seniority systems in collective bargaining is frustrated by uncertainty over so fundamental a legal issue.

Two specific points in respondent's brief in opposition warrant brief reply.

1. Respondent, noting that there are many different employment practices which might be asserted by employers and unions to be embraced within § 703(h)'s protection for seniority systems, invites this Court to wait until it has "the benefit of a body of lower court decisions addressing *the issue* in a variety of factual contexts" (Brief in Op. 14, emphasis added). But "the issue" in this case is not "what employment practices meet § 703(h)'s definition of 'seniority system'." The issue is whether a *particular* widely-used employment practice (found, *inter alia*, throughout the steel industry<sup>1</sup>)—the allocation of jobs within units on the basis of plant seniority—is a seniority system protected by § 703 (h). As to that particular employment practice there is already a conflict among the circuits (see our petition, pp. 10-12). What respondent characterizes as one "factual context" of a larger "issue" is in fact *the issue*. Other types of employment practices will pose different issues, albeit requiring interpretation of the same statutory provision. Given the harm which will befall collective bargaining from a delay in resolving the issue presented, it is far more important that this Court give guidance *to* the lower courts than that it await guidance *from* them.

2. Respondent suggests that the pendency of this petition has delayed the trial of this case (Brief in Op., pp. 4-5, 12). That is not correct, and a brief statement of the present posture of the case seems appropriate.

The decision of the court below remanded four of respondent's claims for further proceedings in the district court, only one of which—the seniority issue presented to this Court—involves the Union. The other three issues relate to

<sup>1</sup> See petition, p. 16 and note 6.

disputes between respondent and the Company in which the Union has no involvement.<sup>2</sup>

When the Union's counsel announced that the Union would seek certiorari on the seniority issue, respondent's counsel requested that the Union not seek a stay of the mandate so that respondent could pursue his claims against the Company. The Union cooperated in this request, and did not seek a stay of mandate.

On February 21, 1979, a status conference was held, and the district court scheduled the resumption of the trial for November 26, 1979. The district court explained at that conference that this was the earliest date upon which its calendar permitted the trial to resume; the date was in no way affected by the Union's intention to file a petition for certiorari.

Respondent's formal motion for acceleration of the trial date was heard on April 4, 1979. At that hearing, the Union made clear that it had no objection to acceleration of the trial against the Company; indeed, as noted, the Union had refrained from seeking a stay of the mandate precisely so that that could occur. The Union did urge, however, that the district court not resume the trial on the seniority issue until this Court had acted. The district court declared that November 26 remained the earliest date upon which it could hear the case, and trial remains set for that date; in so ruling, the district court expressly stated that its ruling as to the trial date was not influenced by the pendency of this petition.<sup>3</sup>

<sup>2</sup> Those issues are Respondent's individual claim that the Company denied him promotion to a supervisory position, and his class claims that the Company discriminates in filling supervisory and craft positions.

**CONCLUSION**

The petition for writ of certiorari should be granted.

Respectfully submitted,

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<sup>3</sup> If certiorari is granted, the Union will move that the November 26 trial not encompass the seniority issue.